

Agricultural Marketing Service, USDA

§ 1134.3

PART 1132—[RESERVED]

PART 1134—MILK IN THE WESTERN
COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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Subpart—Order Regulating
Handling

GENERAL PROVISIONS

§ 1134.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1134.2 Western Colorado marketing
area.

Western Colorado marketing area, hereinafter called the “marketing area”, means all the territory within the outer boundaries of the following counties in the State of Colorado:

Delta, Garfield, Mesa, Montrose.

§ 1134.3 Route disposition.

Route disposition means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a delivery in bulk to a nonpool plant.

§ 1134.4 [Reserved]

§ 1134.5 Distributing plant.

Distributing plant means any plant at which fluid milk products are pasteurized or packaged and from which there is route disposition of Grade A fluid milk products in the marketing area.

§ 1134.6 Supply plant.

Supply plant means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a pool distributing plant.

§ 1134.7 Pool plant.

Except as provided in paragraph (c) of this section, *pool plant* means:

(a) Any plant, hereinafter referred to as a “distributing pool plant”, in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk; and

(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a “supply pool plant” from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).

(c) The term “pool plant” shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) of this section and there is more route disposition (except filled milk) in this marketing area than in the marketing area defined under such other order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of March through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) Any distributing plant from which there is less than an average of 200 pounds of route disposition per day, except filled milk, in the marketing area during the month.

§ 1134.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1134.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1134.12;

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by the association or by a hauler under contract to the association;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1134.7(c); and

(g) A vendor (any person who does not operate a plant described in paragraph (a), (d), (e) or (f) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail and wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

§ 1134.10 Producer-handler.

Producer-handler means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which the is route disposition during the

month in the marketing area: *Provided, That:*

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants or other order plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1134.11 [Reserved]

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with the inspection requirements for fluid consumption of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraphs (a) (1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom not less than 3 days' production was received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 60 percent in the

months of March, April, May, June, July, and August and 30 percent in other months of its member-producer milk received at pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is effective. Such request shall specify the basis for assigning overdiverted milk to the producer-members of each cooperative association, at a time and in a manner approved by the market administrator.

(2) A handler may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom not less than 3 days' production was received during the month at the pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June, July, and August and 30 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler, at a time and in a manner approved by the market administrator, shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purpose of the requirements of § 1134.7, milk diverted for the account of the operator of a distributing pool plant, except an operator who is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purpose of location adjustments pursuant to §§ 1134.52 and 1134.75, milk diverted to a nonpool plant shall

be considered to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1134.44(a)(8)(iii) and the corresponding step of § 1134.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1134.13 Producer milk.

Producer milk means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1134.60:

(1) Received directly from such producer; and

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1134.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to § 1134.9(b), subject to the limitations and conditions provided in § 1134.12; and

(2) For which the cooperative association is the handler pursuant to § 1134.9(c). If the milk received at a pool plant from a handler described in § 1134.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1134.9(c) at the location of the pool plant.

§ 1134.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1134.40(b)(1) from any source other than producers, handlers described in § 1134.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1134.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1134.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1134.40(b)(1)) for which the handler fails to establish a disposition.

§ 1134.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product

of the same nature and butterfat content.

[58 FR 27893, May 11, 1993]

§ 1134.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

[58 FR 27894, May 11, 1993]

§ 1134.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1134.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or its products for its members; and (c) Has its entire activities under the control of its members.

§ 1134.19 [Reserved]**§ 1134.20 Commercial food processing establishment.**

Commercial food processing establishment means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. Producer milk diverted to

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commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including but not limited to, provisions in §§ 1134.12, 1134.13, 1134.41 and 1134.52.

[58 FR 27894, May 11, 1993]

HANDLER REPORTS

§ 1134.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1134.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1134.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1134.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

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(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1134.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in § 1134.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1134.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1134.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in § 1134.9(a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The name of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§ 1134.30 and 1134.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator

deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1134.40 Classes of utilization.

Except as provided in § 1134.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1134.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processor if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk

items, yogurt and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of

such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1134.15 and the fluid cream product definition pursuant to § 1134.16; and

(7) In shrinkage assigned pursuant to § 1134.41(a) to the receipts specified in § 1134.41(a)(2) and in shrinkage specified in § 1134.41 (b) and (c).

[58 FR 27894, May 11, 1993]

§ 1134.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1134.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section, the maximum pounds computed pursuant to such paragraph divided by 0.02; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1134.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1134.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk

on the basis of weights determined from its measurement at the farm and butterfat tests determine from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1134.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Except as provided in paragraph (e) of this section, skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1134.44(a)(12) and the corresponding step of § 1134.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1134.44(a)(7) or the corresponding step of § 1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1134.44(a)(11) or (12) or the corresponding steps of § 1134.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an

other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1134.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in

the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (a) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(a) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to §1134.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to

the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and

other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers by a cooperative association to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1134.9(c) and from a pool plant operated by a cooperative association to another handler's pool plant shall be classified pursuant to § 1134.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to § 1134.60.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27894, May 11, 1993]

§ 1134.43 General classification rules.

In determining the classification of producer milk pursuant to § 1134.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1134.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1134.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1134.40, 1134.41, and 1134.42. The combined pounds of skim milk and butterfat so determined in each class

for a handler described in § 1134.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1134.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1134.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1134.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27895, May 11, 1993]

§ 1134.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1134.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of § 1134.42(e) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1134.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1134.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1134.40(b)(1) in packaged form and in bulk concentrated fluid milk

products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1134.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1134.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II.

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1134.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (a)(5) and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk subject to the provisions of § 1134.42(e), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1134.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class

II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1134.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available

utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1134.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk subject to the provisions of § 1134.42(e), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk subject to the provisions of § 1134.42(e) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the

computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27895, May 11, 1993]

§ 1134.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1134.44(a)(12) and the corresponding step of § 1134.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1134.43(d) and § 1134.44 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of

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this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27895, May 11, 1993]

CLASS PRICES

§ 1134.50 Class prices.

Subject to the provisions of § 1134.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus \$2.00.

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[47 FR 42991, Sept. 30, 1982, as amended at 51 FR 12834, Apr. 16, 1986; 60 FR 6612, Feb. 2, 1995]

§ 1134.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1134.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in

paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

[60 FR 18977, Apr. 14, 1995]

§ 1134.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1134.9(c) at a pool plant, located more than 100 miles by shortest highway distance as measured by the market administrator, from the courthouse in Grand Junction, Colorado, and which is classified as Class I milk or assigned Class I location adjustment credit under paragraph (b) of this section, the price computed pursuant to § 1134.50(a) shall be reduced by 15 cents if such plant is located more than 100 miles but not more than 110 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1134.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply

plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III price for the preceding month.

[60 FR 6612, Feb. 2, 1995]

§ 1134.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1134.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1134.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk subject to the provisions of § 1134.42(e) that were classified in each class pursuant to §§ 1134.43(a) and 1134.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1134.44(a)(14) and the corresponding step of § 1134.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1134.74,

that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1134.44(a)(9) and the corresponding step of § 1134.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1134.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(7)(i) through (iv) and the corresponding step of § 1134.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants and unregulated supply plants;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(7) (v) and (vi) and the corresponding step of § 1134.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1134.43(d) and § 1134.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(11) and the corresponding steps of § 1134.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not

used as an offset for any other payment obligation under any order;

(g) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1134.43(d);

(h) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1134.76 (a)(5) or (c); and

(i) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27895, May 11, 1993]

§ 1134.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1134.60 for all handlers who filed the reports prescribed in § 1134.30 for the month and who made the payments pursuant to §§ 1134.71 and 1134.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1134.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1134.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1134.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1134.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1134.71, 1134.76, and 1134.77, subject to the provision of § 1134.78 and out of which he shall make all payments pursuant to §§ 1134.72 and 1134.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1134.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1134.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1134.75, of such handler's receipts of producer milk and

milk subject to the provisions of § 1134.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1134.73(a), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received (not to be less than the Class III price) of other source milk for which a value is computed pursuant to § 1134.60(f).

(b) On or before the 25th day after the end of the month each person who operated an order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable to the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Each vendor shall pay the market administrator on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to the following conditions:

(1) The quantities of skim and butterfat milk products on which payment shall be made pursuant to this section shall not exceed the vendor's Class I

disposition in the marketing during the month; and

(2) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1134.10(b)(3).

§ 1134.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1134.71(a)(2) exceeds the amount computed pursuant to § 1134.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(a) Not later than the last day of the month, to each producer from whom he received milk during the first 18 days of the month, a partial payment for the milk received during the first 15 days of the month, at the Class III price for the preceding month.

(b) Not later than the 16th day of the month, for milk received during the preceding month, an amount computed at not less than the uniform price, per hundredweight, pursuant to § 1134.61, as adjusted by the butterfat differential specified in § 1134.74, location adjustment specified in § 1134.75 and adjustments for errors made in previous payments minus:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1134.86; and

(3) Deductions approved by the market administrator and authorized in writing by the producer. If the handler has not received full payment for the

delivery period from the market administrator pursuant to § 1134.72, he may reduce his total payments to all producers uniformly by the amount owing to him by the market administrator. The handler shall, however, complete all payments not later than the 16th day of the month following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim by the cooperative association, each handler shall pay to the cooperative association on or before the second day preceding the dates set out in paragraphs (a) and (b) of this section an amount equal to the sum of the individual payments otherwise payable to the producer members of such organization. This payment shall be made for all milk of such producer certified by the cooperative association as a member, beginning the first day of the month following receipt of the certification and ending the last day of the month next preceding the date on which a written notice from the cooperative association terminating the membership was received.

(2) A copy of the request for payment, promise to reimburse, and certified list of members, shall be filed simultaneously with the market administrator. He may verify the information by auditing the records of the cooperative association. Exceptions to the accuracy of the membership certification, by a producer or by a handler, shall be made in writing to the market administrator for his determination.

(d) In making the payments to producers under paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk, a supporting statement which shall show for each month;

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required under this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) For milk received from a pool plant operated by a cooperative association or from a handler described in § 1134.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price, as adjusted pursuant to §§ 1134.74 and 1134.75, less payment made pursuant to paragraph (e)(1) of this section.

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1134.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

[60 FR 18978, Apr. 14, 1995]

§ 1134.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from pro-

ducers, in bulk from a pool plant operated by a cooperative association, and from a handler described in § 1134.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which diverted, each at the rates set forth in § 1134.52; and

(b) For purposes of computations pursuant to §§ 1134.71 and 1134.72 the uniform price shall be adjusted at the rates set forth in § 1134.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1134.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1134.30(b) and 1134.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk

and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less \$1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by \$1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1134.60 for the partially regulated distributing plant if the plant had been a

pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1134.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1134.60 for such handler shall include, in lieu of the value of other source milk specified in § 1134.60(f) less the value of such other source milk specified in § 1134.71(a)(2)(ii), a value of milk determined pursuant to § 1134.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to

the requirements of § 1134.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1134.30(b) and 1134.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1134.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1134.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1134.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1134.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the dif-

ference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27896, May 11, 1993]

§ 1134.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1134.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1134.71, 1134.76, 1134.77, 1134.85 and 1134.86 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided, That:*

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to

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have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1134.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1134.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1134.42(e)) and such handler's own production;

(b) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1134.43(d) and other source milk allocated to Class I pursuant to § 1134.44 (a)(7) and (a)(11) and the corresponding steps of § 1134.44(b), except such other source milk that is excluded from the computations pursuant to § 1134.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1134.76(a)(2).

[47 FR 42991, Sept. 30, 1982, as amended at 58 FR 27896, May 11, 1993]

§ 1134.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1134.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the test-

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ing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) For producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 14th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deductions from each producer was computed.

PART 1135—MILK IN THE SOUTH- WESTERN IDAHO—EASTERN OR- EGON MARKETING AREA

Subpart—Order Regulating Handling

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